



O.H. "IKE" HARRIS  
District No. 8  
2425 Cedar Springs  
Dallas, Texas 75201

Office 128-C, Capitol Building  
Austin, Texas 78711

The Senate of  
The State of Texas

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Opinion Committee

The Honorable Dan Morales  
Attorney General  
STATE OF TEXAS  
Austin, Texas 78711

Dear General Morales:

The 72nd Texas Legislature adopted House Bill 2. The bill amends Chapter 242, containing provisions which relate to insurance and health care plans, the payment of claims, utilization review, and other related subjects.

This bill is consumer oriented, providing that claims must be promptly handled and paid by insurance carriers, protecting the patient from abusive review and denials of benefits through utilization review organizations and providing for the payment of benefits directly to a health care provider upon assignment from the beneficiary.

Certainly the legislature was concerned with providing that consumers who purchase insurance receive the full benefit of that insurance. In addition, the bill facilitates the availability of health care services in Texas. If doctors can be assured that they will be paid by the insurance carrier (based upon an assignment of benefits submitted with the claim form), then there will be more doctors who are willing to accept the assignment and not require the patient to pay the bill at the time of service.

Article 21.24-1 is entitled, "Assignment of Health Care Benefit Payments", and encourages the use of assignments of benefits by doctors and patients. Section 3 provides that an insurer may not deliver, renew, or issue a health insurance policy which prohibits or restricts the written assignment by a covered person of benefits provided under the policy.

Section 4, Subsection (a) provides for direct payment to the holder of an assignment. Subsection (b) provides that upon payment to the health care provider, the insurer is relieved of any obligation to pay the insured directly.

Section 4, Subsection (c) provides as follows:

"(c) The payment of benefits under an assignment does not relieve the covered person of any contractual responsibility for the payment of deductibles and copayments. A physician or other health care provider may not waive copayments or deductibles by acceptance of an assignment.

The first sentence of Subsection (c) provides that the assignment does not, in and of itself, relieve the covered person of any contractual responsibility for the payment of deductibles and copayments. There seems to be a general recognition that if the person has a contractual obligation to pay the

deductible or the copayment, then the assignment does not affect that obligation. Insurance policies and health care plans vary significantly. While some plans require the insured to pay the deductible and copayment, others do not. Some plans even encourage the doctor to accept the insurance benefit as payment-in-full.

Several questions have arisen regarding the second sentence of Section (c). There have been reports of insurance carriers interpreting this sentence to ban completely the waiver by a doctor or health care provider of payment of coinsurance and deductibles, which seems clearly contrary to the qualifying language "by acceptance of an assignment."

First, it seems clear that Subsection (c) does not apply in an instance where a doctor or health care provider does not accept assignment. In such an instance, therefore, the doctor or health care provider could waive deductibles, copayments or any other portion of his fees to any particular patient.

If a doctor or other health care provider does accept assignment, it would appear that the quoted language of Subsection (c) would allow for the waiver of payment of deductibles or copayments or any other portion of the fee so long as the reason for this waiver is not simply the existence of the assignment of benefits. This interpretation of this language appears to be necessary to best serve the public interest and to be consistent with the intent of House Bill 2. It would then be incumbent on the provider to show documentation or other supporting evidence that the waiver was due to a reason other than acceptance of assignment (i.e. financial hardship, contractual mandate of insurance carrier, etc.).

In situations where an individual is financially disadvantaged by the economy or otherwise, doctors and other health care providers will at times waive payment of deductibles or copayments in order to ease a patient's financial burden and to facilitate his or her ability to get necessary health care. It appears that Subsection (c) would not prohibit such a waiver regardless of acceptance of an assignment of benefits for a health insurance policy. If Subsection (c) were to ban such a waiver, then such financially disadvantaged individuals would likely find it considerably difficult to obtain necessary health care services. This would create an inequity based on the patient's ability to pay.

In instances where a doctor or health care provider wishes to extend a professional courtesy to a relative, close friend or other individual, said provider will at times waive payment of deductibles and copayments as a portion of this professional courtesy. It appears that the language in Subsection (c) would not prevent such a waiver regardless of acceptance of assignment of benefits on a health insurance policy. If Subsection (c) were to provide a ban on such waivers, there would be an obvious and significant loss of benefits and additional strain placed on these individuals.

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Some preferred provider organizations which contract for the provision of health care services under a health insurance plan mandate the acceptance of limited fee payments as payment in full for said health care services. In such an instance this would be at least partial waiver of copayments and deductibles. This is also an example of an instance where it would appear that the physician or health care provider may waive copayments or deductibles and at the same time accept an assignment of benefits for a health insurance policy. If Subsection (c) were to ban such a waiver, then these contracts with preferred provider organizations would be in violation of this statute.

The specific question regarding Subsection (c) is as follows: May a physician or health care provider accept an assignment of benefits on a health insurance plan while at the same time waiving payment of deductibles or copayments for reasons unrelated to acceptance of the assignment of benefits, e.g. the financial need of the patient?

Clearly this is a question of significant public interest and I thank you very much for your attention to this matter. If I can furnish your office with any assistance in review, I will be more than happy to do so.

Sincerely,

  
O. H. "Ike" Harris